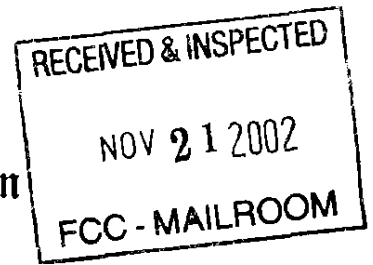


Before the
Federal Communications Commission
Washington, D.C. 20554



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In the Matter of)
)
Reclassification of License of) RM-10567
Station KJEL(FM))
(Lebanon, Missouri))
)
TO: Chief, Audio Division

**REPLY TO OPPOSITION TO MOTION TO ACCEPT LATE FILED
OPPOSITION AND REPLY TO OPPOSITION**

Ozark Broadcasting, Inc. ("Ozark"), by its attorney, hereby respectfully replies to the "Opposition to Motion to Accept Late File Opposition and Reply to Opposition", filed in this proceeding on November 13, 2002, by Four Him Enterprises, L.L.C. ("Four Him"). In reply thereto, it is alleged:

1. In its Opposition, Four Him asserts that the "Order to Show Cause" was published in the Commission's releases and released on September 20, 2002. Four Him, however, does not attach any copy of any Commission press release or Daily Digest. There is a reason for this: no such press release exists. A search in Westlaw, which includes all Commission Daily Digests and press releases, shows that the Order was never released in any such press release or Daily Digest. At some point in time on some date, a copy of the Order may have been placed on the press table in the Office of the Secretary. However, nobody has time to go through the hundreds of pages of formal orders, opinions, decisions, etc., which the Commission issues each week. Interested parties are entitled to rely upon the Daily Digest which, purportedly, announces the releases of pertinent

texts. In this case, no mention was ever made of the Order to Show Cause in the Daily Digest or in any other public notice.

2. In any event, the pertinent statute, 47 U.S.C. Section **316**, requires more than constructive notice; it requires actual notice. Thus, it provides that. "No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action . . .". Merely placing a copy of an order on a press table in the Office of the Secretary is scarcely the written notice required by Section 316. The Commission's staff recognized that to be true, and that is why the staff directed that a copy of the Order be sent to Ozark by certified mail, return receipt requested.

3. In its Opposition, Four Him challenges Ozark to prove a negative. In logic, it is sometimes possible to prove a negative, i.e., if somebody asserted that the undersigned's automobile was totally destroyed in an accident, the undersigned could prove the falsity of that statement by producing the automobile and showing it was in good shape. In most instances, however, it is impossible to prove a negative, i.e., to prove that something did not happen.

4. Attached hereto and marked Exhibit A is a statement from David L. Shepherd, the president of Ozark Broadcasting, Inc., denying that the company ever received a copy of the Order to Show Cause in the mail. Mr. Shepherd should not, however, be required to try to prove that this did not happen. The burden should be on Four Him and the Commission to show that it did. But, Four Him has not produced a copy of any receipt demonstrating that the Order to Show Cause was mailed, much less received by Ozark. So far as we have been able to determine, the Commission is not in possession of any such receipt, either. The most likely explanation for this is simply that somebody at the FCC failed to mail the Order.

5. Here, the pertinent statute requires that a licensee be given actual notice before its license can be modified. Unless it can be proven that actual notice was given by mail - and, so far, the record is bereft of any such proof - the Order to Show Cause did not become effective and the 30 day period to respond to same did not begin to run until November 4, 2002, when **Ozark** for the first time received a facsimile copy of the Order, sent to Ozark's counsel by a member of the FCC staff.

November 20, 2002

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113
(301) 663-1086

Respectfully submitted,

OZARK BROADCASTING, INC.

B :

Lauren A. Colby
Its Attorney

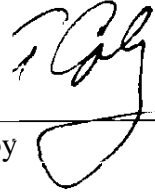
A handwritten signature in black ink, appearing to read 'L. Colby', is written over a horizontal line. The signature is stylized and cursive.

EXHIBIT A

Nov 19 02 11:23a

Lauren A. Colby

301-695-8734

p. 3

STATE OF MISSOURI

)

COUNTY OF Ray

:

ss.

DECLARATION

David L. Shepherd hereby **declares under** penalty of the laws of perjury that the following is true and correct:

I understand that a question has been raised as to whether Ozark Broadcasting, Inc., received a copy of an Order to Show Cause, allegedly released by the FCC on September 20, 2002, which contemplated the downgrading of Station KJEL(FM), Lebanon, Missouri, from a Class C facility to a Class C0 facility.

I am president of Ozark Broadcasting, Inc. We maintain two post office boxes at the Moberly post office, i.e., 430 and 619. Ms. Sherry Jacoby, an employee of Ozark Broadcasting, Inc., since March of 1991, is charged with the duty of going to the post office boxes and picking up the mail on a daily basis. I have questioned Ms. Jacoby and she does not recall receipt of any certified mail from the FCC in the time period in question. My long time assistant, Sharon Burrell, who generally reviews the mail before it is given to me also does not recall the receipt of any certified mail from the FCC during that time period. I, myself, never saw the Order to Show Cause. I first learned about it on November 4, 2002, when my attorney called me and said that he had received a telephone call from an FCC staff member asking whether we were going to respond to the order.

Station KJEL(FM) is an important part of the stations operated by my family. We would never have willingly failed to oppose any order which contemplates a downgrade of that

-2-

station. Everyone involved in the handling of mail in our organization is well aware of the extreme importance of mail, especially certified mail, arriving from the FCC. I can only conclude that we never received a copy of the Order to Show Cause in the mail.

Further declarant sayeth not.

DAVID L. SHEPHERD

Dated: 11/19/02By: 

David L. Shepherd

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid. or by overnight courier this 20th day of November, 2002, to the offices of the following:

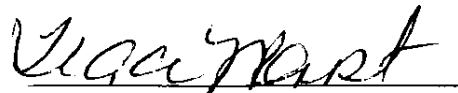
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Traci Maust